



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Mr. David C. Schulze
Interim General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2012-11159

Dear Mr. Schulze:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 459990 (ORR 9017).

Dallas Area Rapid Transit ("DART") received a request for information involving the requestor and a specified time period, including her personnel file, complaints, and supervisor and police reports. You indicate some of the requested information either has been or will be released. You claim other responsive information is excepted from disclosure under sections 552.101 and 552.107(1) of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note some of the submitted information does not fall within the time period specified by the requestor and thus is not responsive to her request for information. This

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes DART to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

decision does not address the public availability of the non-responsive information, which we have marked, and DART need not release that information in response to this request.²

Next, we address your claims for the responsive information under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim section 552.101 in conjunction with constitutional and common-law privacy. Constitutional privacy under section 552.101 protects two types of interests. See Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); see also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See *id.* at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy under section 552.101 protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373

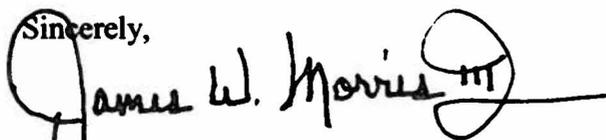
²As the marked information is not responsive to the request and need not be released, we need not address your claim for that information under section 552.107(1) of the Government Code.

at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We conclude some of the responsive information is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, DART must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked the information in the responsive documents DART must withhold. DART also must redact these same types of information from the submitted audio recordings.³ We conclude none of the remaining responsive information either falls within any of the constitutionally protected zones of privacy or consists of information in which an individual's privacy interest outweighs the public's interest in the information. We also conclude none of the remaining information is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, DART may not withhold any of the remaining information under section 552.101 in conjunction with constitutional or common-law privacy.⁴ Thus, as you claim no other exception to disclosure, DART must release the rest of the responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

³We have enclosed a list of the information that must be redacted from the recordings.

⁴We note the submitted audio recordings contain social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Ref: ID# 459990

Enc: Submitted information

c: Requestor
(w/o enclosures)